

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, July 3, 2000

Division One

A088710 -- Ralph v. Lim v. City and County of San Francisco et al.
By the Court: The petition for rehearing is denied. Strankman, A. P. J.

Division Five

**A090708 -- Dae Han K. v. The Superior Court of San Francisco
County; San Francisco Department of Human Services, R.P.I.**

The petition for extraordinary writ review is denied on its merits. (See Cal. Const., art. VI, § 14; Cal. Rules of Court, rule 39.1(B)(o); *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) Petitioner is barred in any subsequent appeal from making any challenges to the order setting a hearing under section 366.26 or any orders prior thereto. (§ 366.26, subd. (l).) Because the section 366.26 hearing is set for July 5, 2000, our decision is final as to this court immediately. (Rule 24(a).) Jones, P.J. We concur: Stevens, J., Kramer, J.* (Not for Publication.)

*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A089665 -- The People v. Myles Damien McDonough.

The judgment is affirmed. Jones, P.J. We concur: Stevens, J., Kramer, J.* (Not for Publication.)

* Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Wednesday, July 5, 2000

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Swager, J. and Marchiano, J.; N. Millner, Deputy Clerk; and CHP Officer S. Aldridge, Bailiff.

A088607 Ching-Hua Chou, et al.,
v.
William Ellis, M.D., et al.,
Cause called and argued by Thomas C. Bright, counsel for appellants, and James Farinaro, counsel for respondents. Cause ordered submitted.

A088607 Charles Munoz,
v.
Western Water Works Supply Co., Inc.
Cause called and argued by Gilbert L. Purcell, counsel for appellant, and Barbara Adams, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice Strankman left the bench and Justice Stein joined the bench. Justice Stein presided over the remaining case.

A086734 Sacramento Transportation Authority,
v.
State of California, et al.
Cause called and argued by David Lew, Deputy Attorney General, counsel for appellants, and Steven L. Mayer, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Wednesday, July 5, 2000

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Stein, J., and Swager, J.; N. Millner, Deputy Clerk; and CHP Officer S. Hoover, Bailiff.

A089437 The People,
 v.
 Brendan Loftus.
Cause called and argued by Dennis P. Riordan, counsel for appellant, and Rene Chacon, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A087833 Columbia Pacific University,
 v.
 Kenneth A. Miller.
Cause called and argued by Orrin L. Grover, counsel for appellant, and Asher Rubin, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A088571 Charles Broughton,
 v.
 Mediacopy.
Cause called and argued by Christopher Fortunan, counsel for appellant, and Roger Myers, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Swager left the bench and Justice Marchiano joined the bench for the remaining case.

A088458 Morris Kaplan,
 v.
 John L. Willis, et al.
Cause ordered submitted.

Court recessed until Thursday, July 6, 2000

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, July 5, 2000

Division One

AO90198 -- The People v. Mark Jeffrey Brandt.

The judgment is affirmed. Strankman, P. J. We concur: Stein, J., Swager, J. (Not for Publication.)

AO85100 -- The People v. Wing Y. Cheng.

Accordingly, the judgment is affirmed. Swager, J. We concur: Stein, Acting P. J., Marchiano, J. (Not for Publication.)

Division Three

A083116 -- Ali Shirazian v. City of Oakland.

This matter is remanded to the trial court for proceedings consistent with the views expressed in this opinion. In particular, the trial court is directed to enter a judgment disapproving the condition that all *off-site* toxic remediation work be completed prior to the commencement of any work for reopening the service station.

Costs are awarded to appellant. Parrilli, J. We concur: Corrigan, Acting P.J., Walker, J. (Not for Publication.)

Division Five

A089373 -- The People v. Sheila Renée Bailey.

The order permanently revoking appellant's probation and imposing her previously suspended prison term is affirmed. Jones, P.J. We concur: Stevens, J., Kramer, J.* (Not for Publication.)

* Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, July 5, 2000 (continued)

A087381 -- In re Jesse G. et al., Persons Coming Under the Juvenile Court Law.

The orders are affirmed. Jones, P.J. We concur: Stevens, J., Kramer, J.* (Not for Publication.)

* Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A088695 -- The People v. Mollison Ott

The order denying appellant's motion pursuant to section 17, subdivision (b)(3) is affirmed. Kramer, J.* We concur: Jones, P.J., Stevens, J. (Not for Publication.)

*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, July 6, 2000

The Court reconvened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Stein, J., and Swager, J.; N. Millner, Deputy Clerk; and CHP Officer G. Barrts, Bailiff.

- A084842 The People,
 v.
 Donald R. Randolph.
Cause called and argued by Carol Strickman, attorney for appellant, and Seth Schalit, Deputy Attorney General, attorney for respondent. Cause ordered submitted.
- A087585 In re Miguel N.
 The People,
 v.
 Miguel N.
Cause called and argued by Sandra Uribe, counsel for appellant, and Victoria K. Lin, Certified Law Student for the Attorney General, counsel for respondent. Cause ordered submitted.
- A089145 Conbord Inc., et al.,
 v.
 Continental Insurance Company.
Cause called and argued by Michel Y. Horton, counsel for appellants, and Richard Nakamura, counsel for respondent. Cause ordered submitted.
- A083002 Syed Badshah Bhukhary,
 v.
 Ho In Kim.
Cause called and argued by Paul Kranz, counsel for appellant, and Thomas Fraysse, counsel for respondent. Cause ordered submitted.

Court adjourned.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, July 6, 2000

Division One

A073986 -- The People v. Aaron Lyndale Cooper.

The judgment of Cross for murder is reversed and in all other respects the judgment of this court entered November 9, 1998, affirming his convictions is reinstated. The judgment of this court entered November 9, 1998, affirming the convictions of Cooper is reinstated without modification. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

x

A089999 -- Andrew J. Carroll v. Tracey A. Britton, et al.

By the Court: Upon request of counsel for appellant, the appeal is dismissed. Strankman, P.J.

Division Two

A081989 -- The People v. Gayle Bishop

A086828 -- In re Gayle Bishop on Habeas Corpus

The conviction on counts 2 and 8 are reversed. The other convictions are affirmed. The petition for writ of habeas corpus, including the proposed "supplements" thereto, is denied.

Our review of the record suggests that the decision to impose a harsh penalty in this case was strongly influenced by the fact of the perjury convictions. In light of our reversal of two of these convictions, including the one upon which the principal term was imposed, we remand for reconsideration of appellant's sentence. We express no opinion on the proper outcome of that reconsideration. Kline, P.J. We concur: Haerle, J., Lambden, J. See separate concurring opinion of Haerle, J. (Not for Publication.)

Thursday, July 6, 2000 (continued)

A086943 -- Bobby Lee Jones v. Alta Bates Medical Center et al.

The disciplinary notice cannot reasonably be interpreted libelous as a matter of law, and without evidence of special damages appellant could not prevail. The decision of the trial court is affirmed. Respondent shall recover costs on appeal. Lambden, J. We concur: Kline, P. J., Ruvolo, J. (Not for Publication.)

A088676 -- The People v. Patrick Bell.

The judgment is affirmed. Lambden, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

A089544 -- Estate of Vera Perrott Vietor, Deceased. R. William Perrott et al. v. Wells Fargo Bank et al.

A090245 -- R. William Perrott et al. v. Wells Fargo Bank et al.

We hereby dismiss appeal A089544, and strike that portion of the notice of appeal to A090245 referring to an appeal from the temporary restraining order. Foundation is awarded sanctions in the amount of \$2,975 pursuant to Code of Civil Procedure section 128.7. Lambden, J. We concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Division Four

A085237 -- The People v. Leon Carthen.

The judgment is affirmed. The case is remanded to the trial court with directions to compute appellant's presentence credits and forward a corrected abstract of judgment listing those credits to the Department of Corrections. Hanlon, P. J. We concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Thursday, July 6, 2000 (continued)

Division Five

A089877 -- The People v. Melvin Charles Jenson.

The judgment is affirmed. Stevens, J. We concur: Jones, P.J., Kramer, J.*
(Not for Publication.)

*Judge of the Superior Court of the City and County of San Francisco
assigned By the Court: the Chief Justice pursuant to article VI, section 6 of the
California Constitution.

A086310 -- Paul Spraggins et al. v. Ken Warren et al.

The portion of the judgment in favor of Paul Spraggins is reversed. The
remainder of the judgment is affirmed. The parties to bear their own costs on
appeal. Kramer, J.* We concur: Jones, P.J., Stevens, J. (Not for Publication.)

*Judge of the San Francisco Superior Court, assigned by the Chief Justice
pursuant to article VI, section 6 of the California Constitution.

Friday, July 7, 2000

Division One

A091129 -- James McBride et al. v. Armand Estrada et al.

By the Court: Appellant having failed to procure the record on appeal within the time allowed or within any valid extensions of time, and having failed to show good cause for relief from default, the appeal filed April 25, 2000, is dismissed. (See Cal. Rules of Court, rule 10(c).) Strankman, P.J.

A089427 -- Ricardo Leyva v. A. C. Newland et al.

By the Court: The petition for rehearing is denied. Strankman, P. J.

A084367 -- Joseph Naegele, as Co-Trustee, etc., et al. v. R.J. Reynolds Tobacco Company.

A084371 -- Richard Donaldson v. R.J. Reynolds Tobacco Company et al.

(Order Modifying Opinion and Denying Rehearing; No Change in Judgment.) By the Court: It is ordered that the opinion filed herein on June 9, 2000, be modified as follows: (SEE ORDER). There is no change in the judgment. Appellants' petition for rehearing is denied. Strankman, P.J. (Certified for Publication.)

Division Two

A086052 -- The People v. Dwain E. Davis.

The judgment is affirmed. Lambden, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

Friday, July 7, 2000 (continued)

A089762 -- The People v. Joel Fish.

Appellant was represented by counsel throughout the proceedings; there was no sentencing error; there are no legal issues that require further briefing. Accordingly, the judgment is affirmed. Kline, P.J. We concur: Haerle, J., Lambden, J. (Not for Publication.)

A090467 -- In re Crystal T. and Yesenia M., Persons Coming Under the Juvenile Court Law.

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888.) Petitioner is barred in any subsequent appeal from making further challenges to the order terminating reunification services and setting a hearing under section 366.26. (See subd. (l)(1).) Since the permanency planning hearing is set for July 11, 2000, our decision is final as to this court immediately. (Rule 24(d).) Ruvolo, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

A084125 -- The People v. Brian Anthony Ordonez.

The judgment is affirmed. Lambden, J. We concur: Kline, P. J., Haerle, J. (Not for Publication.)

A088981 -- In re Reginald J., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Lambden, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A090925 -- Serafin M. v. Superior Court of the County of Mendocino; Menodcino County Department of Social Services et al., R.P.I.

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Since the permanency planning hearing is set for July 20, 2000, our decision is immediately final as to this court. (Cal. Rules of Court, rule 24(d).) Parrilli, J. We concur: McGuiness, P. J., Walker, J. (Not for Publication.)

Friday, July 7, 2000 (continued)

Division Four

A088306 -- Laurence Nasey et al. v. Department of Consumer Affairs.

With these maxims in mind, the only viable interpretation of the above orders is as follows: The dealer registrations are revoked, but the revocations are stayed pending completion of the periods of actual suspension and the terms of probation. Revocation is the immediate consequence of failing to abide by the terms of probation, but should appellants successfully complete probation, the registrations would be reinstated. Since appellants are likely to prevail on the merits of their declaratory relief action, we reverse the judgment. Reardon, J. We concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

Division Five

A087667 -- Golden Eagle Insurance Corporation v. Deputy Trustees of the Golden Eagle Liquidating Trust.

The order of the trial court is affirmed. Stevens, J. We concur: Jones, P.J., Kramer, J.* (Not for Publication.)

*Judge of the San Francisco Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A084821 -- Jacqueline Coulter-Peebles v. Safeway Stores et al.

The judgment is affirmed. Jones, P.J. We concur: Stevens, J., Kramer, J.* (Not for Publication.)

*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, July 10, 2000

Division One

A088413 -- The People v. Matthew Gadberry.

Accordingly, the judgment is affirmed. Swager, J. We concur: Stein, Acting P.J., Marchiano, J.

A089145 -- Conbord Inc., et al. v. Continental Insurance Company.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A089437 -- The People v. Brendan Loftus.

The judgments with respect to counts V (rape in concert) and VII (rape) is reversed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A088546 -- The People v. Felipe Lopez.

Accordingly, the judgment is affirmed. Swager, J. We concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A084397, A084160 -- Christopher Meyer et al. v. Russell Targ et al.

The trial court's determination of the equitable issues is affirmed. The determination of the legal issues is reversed, and the matter is remanded for further proceedings in a manner consistent with this opinion. The award of attorneys' fees and costs is an incident, at least in part, of the reversed portion of the judgment and is also reversed for redetermination at the conclusion of the case. Appellants are entitled to costs on appeal. Marchiano, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

Monday, July 10, 2000 (continued)

Division Two

A085992 -- Richard U. Lealao and Sese Lealao v. Beneficial California, Inc.

The order denying the motion for new trial as to fees is reversed and the matter remanded to the trial court for reconsideration of the reasonable fee to which class counsel is entitled. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Certified for Publication.)

Division Five

A088347 -- Harold J. Rucker v. Louis V. Baesel

The judgment is affirmed. Jones, P.J. We concur: Stevens, J., Kramer, J.* (Not for Publication.)

*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, July 11, 2000

Division One

A088490 -- In re Mark A., a Person Coming Under the Juvenile Court Law.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

A088571 -- Charles Broughton v. Mediacopy, The Hearst Corporation, R.P.I.

The order appealed from is affirmed. Swager, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

A087833 -- Columbia Pacific University v. `Michael v. Abbott.

The judgment is affirmed. Strankman, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A089426 -- In re Manolo D., a Person Coming Under the Juvenile Court Law.

The order placing the minor on probation is affirmed. Swager, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Tuesday, July 11, 2000 (continued)

A087280 -- Charles Munoz v. Western Water Works Supply Co., Inc.

The judgment notwithstanding the verdict is reversed and the order granting new trial is affirmed. Each party shall bear its own costs on appeal. Swager, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

A087585 -- In re Miguel N., a Person Coming Under the Juvenile Court Law.

The order is affirmed. Strankman, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

A090194 -- The People v. Monty Willis Timmons.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A089160 -- In re Veronica V., a Person Coming Under the Juvenile Court Law.

The order is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Division Three

A083220 -- The People v. Aaron J. Lewis.

The appeal is dismissed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

Tuesday, July 11, 2000 (continued)

Division Four

**A085549 -- Sally Meta Walters v. California Department of
Transportation et al.**

By the Court: On the court's own motion rehearing is granted. Hanlon,
P.J.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, July 11, 2000

The Court reconvened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Hanlon, P.J., Poche, J. and Reardon, J.; Pamela Aguilar and Channing Hoo, Deputy Clerks; CHP Officer Shelley Aldridge, Bailiff.

A089072 Trinity Flywheel Power

v.

Hogan Manufacturing, Inc.

Cause called. Donald Maffly argued for appellant Hogan. Ken Philpot argued for respondents. Cause submitted.

At this point, the Court reconstituted itself to include Hanlon, P.J., Poche, J. and Sepulveda, J.

A0888028 Thelma Baker

v.

Edgar A. Gomez

Cause called. Jackson A. Morris, III argued for appellant Gomez. John Robin Orme argued for respondent. Cause submitted.

The Court adjourned at 10:40 a.m.

Tuesday, July 11, 2000 (continued)

Division Five

A084722 -- Iris Payne v. City of Oakland.

The order granting a new trial is affirmed. Jones, P.J. We Concur:
Stevens, J., Kramer, J.* (Not for Publication.)

*Judge of the San Francisco Superior Court assigned by the Chief Justice
pursuant to article VI, section 6 of the California Constitution.

Wednesday, July 12, 2000

Division One

A088187 -- Provident Life and Accident Insurance Company v. Rudolf V. Isch.

It is ordered that the opinion filed herein on June 12, 2000, be modified as follows: (SEE ORDER) There is no change in the judgment. Appellant's petition for rehearing is denied. Strankman, P.J. (Not for Publication.)

Division Two

A086697 -- The People v. Bennie Leon Donithan.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A082700 -- The People v. George Lincoln Coats.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

A088578/A089372 -- Betty Karris et al. v. Jami Abu-Hamdeh et al.

By the Court: The request for publication of the opinion filed June 21, 2000, is denied. McGuiness, P.J.

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, July 12, 2000

Court reconvened at 1:30 p.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: Corrigan, J., Parrilli, J., Walker, J., and I. Calanoc, Deputy Clerk.

A084741 The People,

v.

Arnulfo Cruz.

Cause called and argued by Randi Covin, counsel for appellant; and Deputy Attorney General Ronald Niver, counsel for respondent. Cause ordered submitted.

A087521 Meddie Stamps,

v.

Open Hand Manufacturing, Inc. et al.

Cause called and argued by Meddie Stamps, appellant in pro per; and Teresa Renaker, counsel for respondents. Cause ordered submitted.

A087909 In re Richard Kenneth Lopes on Habeas Corpus.

A085446 The People,

v.

Richard Kenneth Lopes.

Cause called and argued by Philip McGough, counsel for appellant; and Deputy Attorney General Eric Share, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, July 12 ,2000

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuinness P.J., Corrigan J., Parrilli J., Walker, J., and C. Turner, Deputy Clerk.

A086366 Richard J. Rosasco,
 v.
 Commission On Judicial Performance.
 Cause called and argued by Stephen Holmes, counsel for appellant, and Richard
 George Schickele, counsel for respondent. Cause ordered submitted.

A084097 Arvella McArthur,
A085517 v.
 Owens Corning.
 Cause called and argued by Thomas Marven Peterson, counsel for appellant, and
 Gilbert Purcell, counsel for respondent. Cause ordered submitted.

A089723 City and County of San Francisco,
 v.
 Ahmad Ammouri.
 Cause called and argued by Arlo Hale Smith, counsel for appellant, and Karen
 Cynthia Carrera, counsel for respondent. Cause ordered submitted.

A088182 San Francisco Fire Fighters Local 798, et al.,
 v.
 Robert L. Demmons, et al.,
 Cause called and argued by Joseph Martin Quinn, counsel for appellant, and
 Duane Westlee Reno, counsel for respondent. Cause ordered submitted.

court recessed until 1:30 p.m.

Wednesday, July 12, 2000 ((continued))

Division Four

A087637 -- The Regents of the University of California et al. v. The Superior Court, Mary F. Singleton et al., R.P.I.

The superior court is directed to set aside and vacate its order overruling defendants' demurrer to the cause of action in plaintiffs' first amended complaint alleging a violation of the unfair competition law and to enter a new and different order sustaining defendants' demurrer to that cause of action in plaintiffs' first amended complaint. The temporary stay is vacated. Each party is to bear its own costs. Reardon, J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

Division Five

A086335 -- Silver Gruppen A/S, v. Bo Wunsch.

The order is affirmed. Kramer, J.* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, July 13, 2000

Division Two

**A091417 -- William Hollingsworth v. The Superior Court of Solano County,
The People of the State of California, R.P.I.**

By the Court: The petition for writ of prohibition/mandate/stay is denied. Haerle,
Acting P. J.

A091692 -- In re Charles Jackson on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Petitioner must
first seek relief, if any, in the superior court. Kline, P. J.

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Thursday, July 13, 2000

The Court met at 9:00 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Ruvolo, Acting P. J. and S. Graham, Deputy Clerk.

A090115 Daniel M. Impey, et al.
v.
Peoplesoft, Inc.,
O.S.C. called and argued by James E. Sell, counsel for respondent and Genese Dopson Smith, counsel for appellant. Matter ordered submitted.

Court recessed until 9:30 a.m.

Court reconvened at 9:30 a.m. Present: Kline, P. J., Haerle, J., Lambden, J. and S. Graham, Deputy Clerk.

A090920 Annette C.
v.
Superior Court, County of Mendocino
Social Services Agency, et al.
Cause called and argued and by Julie Spoljaric, counsel for petitioner and Sandra Lynn Applegate, Deputy County Counsel, counsel for Real Party in Interest.
Cause ordered submitted.

A087472 Atlantic Mutual Insurance Co.
A089469 v.
Stone Candles, Inc.
Causes called and argued by Marilyn Raia, counsel for plaintiff and James R. Colgan, counsel for defendants. Causes ordered submitted.

A86449 Perry S. Shers
v.
Francine A. Rahn
Cause called and argued (telephonically) by Perry Shers, appellant in propria persona and Renee Richards, counsel for respondents. Cause ordered submitted.

- A089829 James R. Bradley
v.
Seller, Hazard, Fitzgerald, McNeely & Alm
Cause called and argued by William Gordon Lewis, counsel for appellant and William Kronenberg, counsel for respondent. Cause ordered submitted.
- Court recessed until 1:30 p.m.
- Court reconvened in its courtroom at 1:30 p.m. Present: Kline, P. J., Haerle, J., Ruvolo, J. and S. Graham, Deputy Clerk.
- A090162 Planned Parenthood Golden Gate, et al.
v.
Superior Court, San Mateo County
Rossi Foti, et al.
Cause called and argued by Beth Parker, counsel for petitioner and Catherine Short, Pallie Zambrano and Terry Thompson, counsel for real parties in interest. Cause ordered submitted.
- A086143 J. William Dawson
v.
California Department of Insurance
Allstate Insurance Company
Cause called and argued by Kevin J. McInerney, counsel for appellant and Randall Borcharding and Vanessa Wells, counsel for respondents. Causes ordered submitted.
- A087805 California-Nevada Annual Conference of the United Methodist Church, et al.
v.
John Jones, et al.
Cause called and argued by John E. Jones, counsel for appellants and Claudia Robinson, counsel for respondents. Cause ordered submitted.
- At this point in the proceedings, Justice Kline left the bench and Justice Lambden joined the bench.
- A088459 Cherie DuVal
v.
Paul W. Stewart, et al.
Cause called and argued by Brian Newcomb, counsel for appellant and Harold

Justman, counsel for respondents. Cause ordered submitted.

cA078075 City and County of San Francisco

v.

Carolyn Daley

Charles Lewis

A084881 Ron Daley

v.

City and County of San Francisco

Causes called and argued by Ron Daley, appellant in propria persona,

Matthew Cohen, counsel for appellant Carolyn Daley, Kimon Manolius, Deputy

City Attorney, counsel for respondent City and Co. of San Francisco and JoLynn

Lambert, counsel for respondent Charles Lewis. Causes ordered submitted.

Court recessed until Friday, July 14, 2000 at 9:30 a.m.

Friday, July 14, 2000

Division One

A087866 -- Raymond Dunkin v. Lisa Boskey.

Accordingly, the judgment is reversed and the case is remanded to the trial court for proceedings consistent with the views expressed herein. Costs on appeal are awarded to appellant. Swager, J. We concur: Strankman, P. J., Stein, J. (Certified for Publication.)

A083002 -- Syed Badshah Bhukhary v. Ho In Kim.

The judgment is reversed and the case remanded for further proceedings in accordance with this opinion.

Costs on appeal are awarded to appellant. Swager, J. We concur: Strankman, P. J., Stein, J. (Not for Publication.)

A088092 -- The People v. Troy Louis Thomas.

The judgment is affirmed. Swager, J. We concur: Strankman, P. J., Stein, J. (Not for Publication.)

Division Two

A083734 -- The People v. Keith O. Johnson.

A089481 -- In re Keith O. Johnson on Habeas Corpus.

The judgment is affirmed. The petition for a writ of habeas corpus is denied. Haerle, Acting P. J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A084793 -- The People v. Stephen Victor Moody.

The judgment is affirmed. Ruvolo, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

A087569/A088193 -- Kathleen Murphy v. Petsmart, Inc., et al.

The judgments are affirmed. Ruvolo, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

Friday, July 14, 2000 (continued)

A084086 -- Bronson, Bronson & McKinnon v. Wilkie C. Courter.

The judgment is affirmed. Lambden, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

A083665 -- City and County of San Francisco v. Tony Tijerino.

By the Court: It is ordered that the opinion filed herein on June 26, 2000, meets the criteria established by rule 976(b)(1) of the California Rules of Court, and is certified for publication. Haerle, Acting P. J.

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Friday, July 14, 2000

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kline, P. J., Lambden, J., Ruvolo, J. and I. Santos, Deputy Clerk.

- A086287 The People,
 v.
 Mohammed Saleem Hussein.
Cause called and argued by Joseph E. Chabot, counsel for appellant, and Deputy Attorney General, Kelly Cross, counsel for respondent. Cause ordered submitted.
- A087899 The People,
 v.
 Manuel Guerra Zavala.
Cause called and argued by Ozro Childs, counsel for appellant, and Deputy Attorney General, counsel for Matthew Boyle, counsel for respondent. Cause ordered submitted.
- A087120 Kenneth Kugelman et al.
 v.
 John Crane, Inc.
Cause called and argued by Gilbert Purcell, counsel for appellant, and Philip Ward, counsel for respondent. Cause ordered submitted.
COURT ADJOURNED.

Friday, July 14, 2000 (continued)

Division Three

A082424 -- Henrietta Mitchell v. Sequoia Ventures, Inc.

By the Court: The request for publication of the opinion filed on June 16, 2000, is denied. McGuiness, P.J.

Division Four

A089765 -- The People v. Gary Brown.

The judgment is affirmed. Poché, Acting P. J. We concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A088362 -- In re Patricia D., a Person Coming Under the Juvenile Court Law.

The dispositional order of the juvenile court is affirmed. Poché, J. We concur: Hanlon, P. J., Sepulveda, J. (Not for Publication.)

A090922 -- Rubin D. v. The Superior Court of San Francisco County; San Francisco County Department of Human Services, R.P.I.

The petition for writ of mandate is denied on the merits.

The section 366.26 hearing is set for July 19, 2000. Our decision is final in this court immediately. (Cal. Rules of Court, rule 24.) Sepulveda, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

A088965 -- The People v. Arvid Lee Funcannon.

Judgment affirmed. Reardon, J. We concur: Hanlon, P. J., Sepulveda, J. (Not for Publication.)

Monday, July 17, 2000

Division One

A085366 -- Lisa Kaufman v. Richard Riede et al.

By the Court: It is ordered that the opinion filed herein on June 23, 2000, be modified as follows: (See Order.)

There is no change in the judgment. Appellant's petition for rehearing is denied. The request for publication is denied. Strankman, P.J.

A089947 -- In re Deltessar O., a Person Coming Under the Juvenile Court Law. Contra Costa County social Services Dept. v. Robert E.

By the Court: The appeal is dismissed. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.) Strankman, P.J.

A084500 -- The People v. Sergio Martinez Ponce.1

By the Court: Due to clerical error and inadvertence, it was omitted from the opinion filed June 12, 2000, that Justice Poché was sitting as an association justice in Division One of this Court by special assignment. Strankman, P.J.

Division Two

A085604 -- The People v. Lydia Robinson-Jackson.

The judgment of conviction is reversed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A091735 -- Theodore P. McElhone v. The Superior Court of Alameda County, University of California, R.P.I.

By the Court: The petition for writ of mandate/prohibition is denied. Kline, P.J.

A091786 -- In re Robert Allen Wigley, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Haerle, Acting P.J.

Friday, July 17, 2000 (continued)

A091747 -- Xelan, Inc. et al. v. The Superior Court of Alameda County, Royal Maccabees Life Insurance Company, R.P.I.

By the Court: The petition for writ of mandate/stay is dismissed as moot.
Kline, P.J.

A091789 -- Janet Yip v. Aaronson, Dickerson, Cohn & Lanzone, et al.
The petitioner for writ of supersedeas/stay is denied. Haerle, Acting P.J.

Division Three

A087521 -- Meddie Stamps v. Open Hand Manufacturing et al.

The trial court's orders and judgment are affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Walker, J. (Not for Publication.)

Division Five

A087037 -- James M. McDermott v. Union Pacific Railroad Company.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Kramer, J.*
(Not for Publication.)

*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, July 18, 2000

Division One

A086083 -- Ricardo d. Ramirez v. Daniel H. Eisan, et al.

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Division Two

A085064 -- California Correctional Peace Officers Association et al. v. State of California.

The order granting the modified preliminary injunction is reversed with directions to modify it in accord with this opinion. The stay granted by writ of supersedeas is dissolved. Each party to bear its own costs on appeal. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Certified for Publication.)

A086667 -- Estate of Nestor Issakides, Deceased.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A086602 -- George Krusi v. S.J. Amoroso Construction Co., Inc., et al.

By the Court: It is ordered that the opinion filed herein on June 23, 2000, be modified in the following particulars: (SEE ORDER) This modification does not effect a change in the judgment. Haerle, Acting P.J. (Certified for Publication.)

A087372 -- Jeffrey A. Venema v. Bank of America National Trust and Savings Association et al.

The trial court's judgment is reversed and remanded. Costs on appeal are awarded to appellant. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Tuesday, July 18, 2000 (continued)

A091412 -- Larry Viera v. The Superior Court of Del Norte County, Director, California Department of Corrections, R.P.I.

By the Court: Respondent court having complied with the directive of paragraph (a) of the alternative writ issued by this court on June 30, 2000, the petition for writ of mandate is dismissed as moot. Haerle, Acting P.J.

Division Three

A090770 -- Dominic J. Affinito, et al. v. City of Fort Bragg, et al.

Respondent's motion to dismiss the appeal is granted. Corrigan, J. We Concur: McGuiness, P.J., Walker, J. (Not for Publication.)

A084759 -- The People v. Linda Feddersen.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Walker, J. (Not for Publication.)

A087121 -- Richard Frazer et al. v. Realty World-Selzer Realty et al.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

A085242 -- The People v. Tery Ty Griffey.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

A085908 -- Catherine Haley v. Ione Conlan.

By the Court: The petitions for rehearing are denied. McGuiness, P.J.

A088868 -- The People v. Earl Nelson McMullen.

The judgment is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

Tuesday, July 18, 2000 (continued)

A086366 -- Richard J. Rossasco v. Commission on Judicial Performance.

The order sustaining the demurrer without leave to amend is modified by adding thereto the following sentence: "The alternative writ is discharged, and the petition for writ of mandate is dismissed. As such, the order is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Walker, J. (Certified for Partial Publication.)

A089723 -- City and County of San Francisco v. Ahmed Ammouri.

The judgment is reversed. City to bear costs of appeal. McGuiness, P.J. We Concur: Corrigan, J., Walker, J. (Not for Publication.)

Division Five

A088657 -- In re Andrew B., a Person Coming Under the Juvenile Court Law, The People v. Andrew B.

The order adjudicating appellant a continued ward of the court pursuant to Welfare and Institutions Code section 602 and placing him in his mother's home is affirmed. Kramer, J.* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, July 19, 2000

Division One

A088977 -- The People v. Danny Wimbley.

By the Court: Pursuant to this court's order of June 5, 2000 and the Court Certificate received from the Alameda County Superior Court, the remittitur issued on May 23, 2000 is hereby vacated and the above-captioned appeal is restored to active status.

The appellant's opening brief is to be served and filed within 30 days from the date of this order. Strankman, P.J.

Division Two

A088104 -- Cheryl Olson Kendrick et al. v. City of Eureka et al.

The judgment is affirmed. Costs on appeal are awarded to respondents. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Certified for Publication.)

Division Four

A086419 -- The People v. Thomas Frishmuth.

The judgment is affirmed. Sepulveda, J. We Concur: Poché, Acting P.J., Reardon, J. (Not for Publication.)

A088028 -- Thelma Baker v. Edgar A. Gomez.

The judgment is affirmed. Poché, J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

A089072 -- Trinity Flywheel Power et al. v. Hogan Manufacturing, Inc.

The judgment is affirmed. Hanlon, P.J. We Concur: Poché, J., Reardon, J. (Not for Publication.)

Wednesday, July 19, 2000 (continued)

A087059 -- Harry Gossard et al. v. John D. Morgridge.

The order amending the judgment is affirmed. Costs are awarded to respondent. Kramer, J.* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, July 20, 2000

Division One

A088387 -- In re Marriage of Deborah E. and Ethaniel J. Brooks.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

Division Three

A087486 -- The People v. Patrick John Aragon.

We therefore affirm. Walker, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

A088906 -- The People v. David Tintorri.

There was no error in either the entry of the plea or the imposition of sentence. There are no meritorious issues to be argued. The judgment and sentence are affirmed. Corrigan, Acting P.J., McGuiness, P.J., Parrilli, J. (Not for Publication.)

Division Four

A090927 -- Ragen A. v. The Superior Court of Alameda County, Alameda County Social Services Agency, R.P.I.

The petition for writ of mandate is, therefore, denied.

The section 366.26 is set for August 4, 2000. This opinion is final as to this court forthwith. (Cal. Rules of Court, rule 24.) Hanlon, P.J. We Concur: Poché, J., Sepulveda, J. (Not for Publication.)

A086797 -- Brigham & Gaustad v. Marc Tosa.

The order is affirmed. Hanlon, P.J. We Concur: Poché, J., Reardon, J. (Not for Publication.)

A088646 -- State Board of Equalization v. Doreen (H.Y.) Woo.

The order is affirmed. Hanlon, P.J. We Concur: Poché, J., Reardon, J. (Certified for Publication.)

Friday, July 21, 2000

Division One

A089892 -- The People v. Alejandro Morales.

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Division Two

A089267 -- The People v. Neil Ernest Hubler.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A086449 -- Perry S. Shers v. Francine A. Rahn et al.

The judgment is affirmed. Respondents are entitled to recover their costs. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Four

A085132 -- The People v. Randy Nunez.

The judgment is affirmed. Reardon, J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

Division Five

A091195 -- Paulette R. v. The Superior Court of Contra Costa County, Contra Costa County Department of Children and Family Services.

The order to show cause is discharged, and the petition for extraordinary relief and request for a stay are denied on their merits. (Cal. Const., art. VI, § 14; Rule 39.1B(o); *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Petitioner is barred in any subsequent appeal from making further challenges to the orders terminating reunification services and setting a hearing under section 366.26. (§ 366.26, subd. (I).) Because the section 366.26 hearing is set for July 28, 2000, our decision is final as to this court immediately. (Rule 24(a).) Jones, P.J. We Concur: Stevens, J., Kramer, J.*

*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, July 24, 2000

Division One

A085333 -- The People v. Dennis Dunham.

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Marchiano, J.
(Not for Publication.)

A088583 -- Brent Gilbert et al. v. National Old Timers Rodeo Association et al.

The judgment of dismissal is affirmed as to all defendants except for NOTRA, Ragsdale, Farris, Benson, Pearl-Benson and Hertzog. The judgment of dismissal is reversed as to NOTRA, Ragsdale, Farris, Benson, Pearl-Benson and Hertzog and as to those defendants, the trial court is ordered to stay the action on the grounds of forum non conveniens. Appellants are to pay the appellate costs of all defendants save those of NOTRA, Ragsdale, Farris, Benson, Pearl-Benson, and Hertzog. Appellants and NOTRA, Ragsdale, Farris, Benson, Pearl-Benson and Hertzog will bear their own costs on appeal. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

A087673 -- The People v. Nickey A. Taylor.

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Marchiano, J.
(Not for Publication.)

Division Three

A085460 -- Sam C. Horton et al. v. City of Oakland et al.

The judgment is affirmed. Corrigan, Acting P.J. We Concur: McGuinness, P.J., Walker, J. (Certified for Publication.)

Tuesday, July 25, 2000

Division One

A085777 -- The People v. Ian Blues Bennington.

We modify the judgment to strike the misdemeanor conviction on counts VII and IX. As modified, the judgment of conviction is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A089280 -- In re Kathryn K., et al., a Person Coming Under the Juvenile Court Law.

The order is affirmed. Stein, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

A088458 -- Morris Kaplan v. John L. Willis et al.

Appellant failed to controvert the expert declaration submitted on behalf of Dr. Willis. His attempt to include Long Valley Health Center is barred by the statute of limitation. The judgment is affirmed. Marchiano, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

A089109 -- In re William L.P., a Person Coming Under the Juvenile Court Law.

The jurisdictional and dispositional findings and orders are affirmed. Marchiano, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

Division Two

A087765 -- In re Miesha E., a Person Coming Under the Juvenile Court Law.

We remand this matter to the juvenile court for an express declaration as required by Welfare and Institutions Code section 702. The court's jurisdictional and dispositional findings are affirmed in all other respects. Ruvo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Tuesday, July 25, 2000 (continued)

Division Three

A088627 -- The People v. James Robert Russell, II.

Affirmed. Walker, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

Division Five

A089193 -- The People v. James Michael Sepulveda.

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Kramer, J.* (Not for Publication.)

*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, July 26, 2000

Division One

A087300 -- The People v. Ramon Plancarte Avila.

The judgment of conviction is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A088607 -- Ching-Hua Chou et al. v. William Ellis et al.

The order denying appellants' motion to compel arbitration is reversed. The matter is remanded for further proceedings in accordance with this opinion, including severance of the request for injunctive relief, and any necessary fact-finding on the issue of interstate commerce. Any requests regarding class action status, stays and further prosecution of the case may be presented to the superior court. Costs on appeal are awarded to appellants. Marchiano, J. We Concur: Strankman, P.J. Swager, J. (Not for Publication.)

A088833 -- The People v. Heiu Su

The judgment of commitment is affirmed. Marchiano, J. We Concur: Strankman, P.J., Swager, J. (Not for Publication.)

Division Two

A086566 -- Nancy L. M. v. Richard Marcantonio.

The order dismissing all causes of action in Nancy and Robert's third amended complaint is reversed, with the exception of the dismissal of the second cause of action, which is affirmed. Haerle, J. I Concur: Lambden, J., (See Concurring Opinion of Ruvolo, J.) (Not for Publication.)

A091878 -- In re Jesse Martinez, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied without prejudice to petitioner seeking relief, if any, in the Sixth District Court of Appeal. Kline, P.J.

A091886 -- Joseph R. Teitgen v. The Superior Court of Solano County, The People of the State of California, R.P.I.

By the Court: The petition for writ of mandate is denied. Kline, P.J.

Wednesday, July 26, 2000 (continued)

A090887 -- Wells Fargo Bank, N.A. v. The Superior Court of San Francisco County, James R. Seaman, et al. R.P.I.

By the Court: The petition for writ of mandate/prohibition is denied. Kline, P.J.

Division Three

A084741 -- The People v. Arnulfo Leon Cruz.

Affirmed. Walker, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

Division Four

A086901 -- The People v. Calvin Carrell.

The judgment is affirmed. Reardon, J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

A089594 -- The People v. Kurt Edward Fairbanks.

The order revoking and then reinstating probation on the condition that appellant serve one year in the county jail is affirmed. Hanlon, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Thursday, July 27, 2000

Division One

A091398 -- James W., Sr. v. The Superior Court of San Mateo County; San Mateo County, Human Services Agency, Children and Family Services, R.P.I.

The challenged orders are supported by substantial evidence. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.) The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.)

The section 366.26 hearing is set for August 7, 2000. Therefore, our decision is final in this court immediately. Strankman, P.J. We Concur: Stein, J., Marchiano, J. (Not for Publication.)

Division Two

A090919 -- Adrian C. v. The Superior Court of Mendocino County, Mendocino County Department of Special Services., R.P.I.

In the matter of Annette C. and Sarah C., Minors.

The petition for extraordinary writ is denied on the merits and the temporary stay is of the section 366.26 hearing is dissolved. Our decision on this writ petition is final as to this court immediately. (Rule 24(d).) Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A090920 -- Annette C. v. The Superior Court of Mendocino County, Mendocino County Department of Special Services., R.P.I.

In the matter of Annette C. and Sarah C., Minors.

The petition for extraordinary writ is denied on the merits and the temporary stay is of the section 366.26 hearing is dissolved. Our decision on this writ petition is final as to this court immediately. (Rule 24(d).) Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Thursday, July 27, 2000 (continued)

Division Three

A085446 & A087909 -- The People v. Richard Kenneth Lopes. In re Richard Kenneth Lopes, on Habeas Corpus.

The judgment is affirmed. The petition for a writ of habeas corpus is denied. Corrigan, Acting P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

A088182 -- San Francisco Firefighters Local 798, et al. v. Robert L. Demmons, et al.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Walker, J. (Not for Publication.)

A089157 -- In re Lacy T., a Person Coming Under the Juvenile Court Law, Social Services Agency v. Douglas T.

The court's order is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

Division Four

A087704 -- The People v. Lonnie Lee.

The judgment is affirmed. Poché, J. We Concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A078464 -- The People v. Court Frederick Stewart.

Accordingly, we vacate the sentence and remand case No. 086361 to Marin County Superior Court for resentencing by a judge other than the Honorable John S. Graham. Poché, Acting P. J. I Concur: Sepulveda, J. (See Dissenting Opinion of Reardon, J.) (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION FIVE

Thursday, July 27, 2000

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.
Present: Jones, P.J.; Stevens, J.; Rivera, J., on assignment by the Chief Justice and Richard H. Sandvik, Deputy Clerk.

- A088647 Association Of Round Haul Herring Fishermen
 Of San Francisco Bay
 v.
 State Of California
Cause called and argued by Cory A. Birnberg, counsel for appellant and by John Davidson, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A087113 Zia Sabetimani et al.
 v.
 Buell & Berner et al.
Cause called and argued by Lorraine M. Walsh, counsel for appellant and by Basil N. Plastiras, counsel for respondent. Cause ordered submitted.
- A087305 Zia Sabetimani et al.
 v.
 Buell & Berner et al.
Cause called and argued by Lorraine M. Walsh, counsel for appellant and by Basil N. Plastiras, counsel for respondent. Cause ordered submitted.
- A087374 Phoenix Iron Works, Inc.
 v.
 Department Of Transportation
Cause called and argued by Michael O'Connor Lamphere, counsel for appellant and by Kenneth Nellis, counsel for respondent. Submission deferred.
- A089342 Dame Construction Company, Inc.
 v.
 Daniel Smith Plastering, Inc.
Cause called and argued by Paul Herbert, counsel for appellant and by David Collins, counsel for respondent. Cause ordered submitted.

A088012 Insurance Commissioner Of The
State of California
v.
Golden Eagle Insurance Company
Barry Meijer, et al.
Cause called and argued by Alexandra S. Ward, counsel for appellant and by Kelly K. Beck, counsel
for respondent. Cause ordered submitted.

A088196 Neil Broome
v.
City And County Of San Francisco
Cause called and argued by Curtis G. Oler, counsel for appellant, counsel for respondent did not
appear. Cause ordered submitted.

A089460 Paul C. Hudson
v.
Charles Jarvis Murray
Cause called and argued by Peter Bassing, counsel for appellant and by Robert E. Thompson,
counsel for respondent. Cause ordered submitted.

A089024 Northern California Diagnostic Laboratories, Inc.
v.
Douglas H. Crowhurst et al.
Cause called and argued by Paul R. Kleven, counsel for appellant and by Robert M. Bone, counsel
for respondent. Cause ordered submitted.

A086871 The People
v.
Cecil Eugene Huggins
Cause called and argued by Valerie C. West, counsel for appellant and by Matthew P. Boyle, Deputy
Attorney General, counsel for respondent. Cause ordered submitted.

A086302 The People
v.
Robert Messier
Cause called and argued by Scott A. Sugarman, counsel for appellant and by Ross C. Moody, Deputy
Attorney General, counsel for respondent. Cause ordered submitted.

A086576 The People
 v.
 David Alan Marchant
Cause called and argued by Bobbie F. Stein, counsel for appellant and by Christopher J. Wei,
Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A086869 The People
 v.
 Tito Jaime Guerrero
Cause called and argued by Brad O'Connell, counsel for appellant and by Eric D. Share, Deputy
Attorney General, counsel for respondent. Cause ordered submitted.

Court adjourned at 2:40 p.m.

Friday, July 28, 2000

Division One

A090225 -- The People v. Gregory Allen Foss.

The judgment is affirmed. Strankman, P.J. We Concur: Stein, J., Marchiano, J. (Not for Publication.)

Division Two

A089829 -- James R. Bradley v. Sellar, Hazard, Snyder, Fitzgerald, McNeely & ALM.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A091562 -- Robert A. Borissoff v. The Superior Court of San Francisco County, Taylor & Faust, et al.

By the Court: The petition for writ of mandate/prohibition is denied. Kline, P.J.

A082761 -- Brittan Heights Condominium Association v. Franchise Tax Board.

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A091892 -- In re Roosevelt Gillette, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

A091932 -- Hamcor, Inc., et al. v. The Superior Court of Alameda County. Linda Derickson, R.P.I.

By the Court: The petition for writ of mandate/prohibition/stay is denied. Kline, P.J.

A086148 -- Alexander L. Lawrence. v. District Council of Painters No. 8, et al.

The judgment is reversed and this case is remanded to the trial court for further proceedings consistent with this opinion. Appellants are awarded their costs on appeal. Haerle, Acting P.J. I Concur: Lambden, J. (See Concurring & Dissenting Opinion by Ruvolo, J.) (Not for Publication.)

Friday, July 28, 2000 (continued)

Division Two

A088210 -- The People v. Ronald Gerald Lewis.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A088321 -- In re Nicholas W., a Person Coming Under the Juvenile Court Law.

The judgment of the trial court is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Three

A087715 -- The People v. Kevin Christopher Dixon.

The conviction of a level and lascivious act upon a child 14 or 15 years, count two, and battery, count five are reversed. The judgment of conviction is affirmed in all other respects. The trial court shall prepare an amended abstract of judgment and forward a certified copy to the Department of Corrections. Corrigan, J. We Concur: McGuiness, P.J., Walker, J. (Not for Publication.)

A087570 -- William R. Grecian v. Unity House, et al.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

Division Four

A086982 -- Harvey Greenfield v. Fritz Companies, Inc.

The purported appeal from the order sustaining the demurrer is dismissed. The judgment is affirmed with respect to the third cause of action for violating Corporations Code section 1507. (See fn. 1 ante.) The judgment is reversed in all other respects. The parties shall bear their costs on appeal. Poché, J. We Concur: Hanlon, P.J., Sepulveda, J. (Certified for Publication.)

Friday, July 28, 2000 (continued)

A089951 -- In re Raymond M., a Person Coming Under the Juvenile Court Law. People v. Raymond M., Orfita H., Appellant.

If Raymond M. had appealed, we would affirm the orders adjudicating him a continued ward of the court pursuant to Welfare and Institutions Code section 602 and placing him outside the homes of his parents. Since only his mother, Orfita H., signed the notice of appeal, we dismiss the matter because the mother has neither a statutory nor constitutional right to appeal. (*In re Almalik S.* (1998) 68 Cal.App.4th 851, 853-854.) Poché, J. We Concur: Hanlon, P.J., Sepulveda, J. (Not for Publication.)

A088157 --The People v. Charles Edward Miller.

The judgment is affirmed. Reardon, J. We Concur: Hanlon, P.J., Poché, J. (Not for Publication.)

Monday, July 31, 2000

Division One

A089738 -- The People v. Mary Jo Anderson.

Finding no other issues that require further briefing, the judgment is affirmed, and the matter is remanded to the trial court for its determination of appellant's presentence custody credits. Swager, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

A089184 -- The People v. James Earl Hines.

The Court:* The matter is therefore remanded to the trial court for the limited purpose of resentencing. In all other respects the judgment is affirmed.

*Before Strankman, P.J., Stein, J., and Marchiano, J. (Not for Publication.)

A089009 -- The People v. Rueben Andrew Sterling.

The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

A087383 -- The People v. Emeteri C. Bejarano.

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A086322 -- City of Vacaville et al. v. State of California.

The judgment is affirmed, and respondents are awarded costs. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Three

A086569 -- The People v. Susan August Angelo.

Affirmed. Walker, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Monday, July 31, 2000 (continued)

A086232 -- In re the Marriage of Glenn and Monika Goddard.

This case is remanded to the family court for resolution of the issue(s) discussed in part III., *supra*. In all other respects, the judgment is affirmed. We also remand for determination of respondent's entitlement to an award of attorney fees, as set forth in part IV., *supra*.

The final question we must resolve is who should bear the costs of appeal. Respondent is the prevailing party on the issues discussed in parts I. and II., *supra*. Although appellant is entitled to remand to resolve the issue in part III., *supra*, we do not find that he is entitled to reversal of the judgment in whole or in part. We further observe that the issues raised by appellant and discussed in part II., *supra*, border on the frivolous. (See Cal. Rules of Court, rule 26(b).) Accordingly, we exercise our discretion to award respondent all ordinary costs of appeal. (Cal. Rules of Court, rule 26(a).) McGuiness, P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

A084119 -- The People v. Stephanie Rochelle Jackson.

By the Court: The petition for rehearing is granted. McGuiness, P.J.

A087293/A088484 -- Estate of Louis Joseph, Deceased, Kim Barnum-Smith v. James C. Joseph.

By the Court: The petition for rehearing is denied. Corrigan, Acting P.J.

A088927 -- The People v. George Lopez.

We have independently reviewed the entire record, and find no errors or issues requiring further briefing. Affirmed. Walker, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A085423 -- The People v. Rosario S. Medina.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A089876 -- The People v. Salvador Mendoza.

We have independently reviewed the entire record in this case, and have found no errors, nor any issues requiring further briefing. The judgment and sentence are affirmed. Walker, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Monday, July 31, 2000 (continued)

A087258 -- The People v. Renee Myers.

In sum, there was overwhelming evidence to support the trial court's findings that appellant had violated her probation by continuing her attempts to defraud Stewart and launching new efforts to obtain money under false pretenses by filing a fraudulent claim with Allstate. The judgment is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

A085335 -- The People v. Luc Van Nguyen.

Affirmed. Walker, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A084311 -- The People v. Damon Darnell Peterson.

The judgment is affirmed. Walker, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A085631 -- Rodolfo Velasquez v. Jose Antonio Raya et al.

A088538 -- Jose Antonio Raya v. Rodolfo Velasquez.

The judgment quieting title to the Property of Velasquez in Solano County Superior Court case No. L003101, on appeal in No. A085631, is affirmed. The order dismissing the action in Solano County Superior Court case No. L012552, on appeal in No. A088538, is affirmed.

As sanctions for bringing the frivolous appeal in No. A088538, Attorney Gregory Chandler shall pay to Velasquez the sum of \$8,400. All sanctions, including those previously imposed by the Superior Court of Solano County in this matter, shall be paid no later than 15 days after the date remittitur is filed. In addition, Attorney Gregory Chandler and the clerk of this court are *each* ordered to forward a copy of this opinion to the State Bar upon return of the remittitur. (Bus. & Prof. Code, §§ 6086.7, subd. (c), 6068, subd. (o)(3); *Pierotti v. Torian*, *supra*, 81 Cal.App.4th at pp. 36-38; *Caro v. Smith* (1997) 59 Cal.App.4th 725, 738-740.)

Appellants Jose and Dolores Raya shall pay all costs incurred by respondent Velasquez on both appeals. McGuiness, P.J. We Concur: Parrilli, J., Walker, J. (Not for Publication.)

Monday, July 31, 2000 (continued)

Division Four

A087914 -- The People v. Mahmoud H. Abuelhawa.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, J.
I concur in the judgment: Poché, Acting P.J. (Not for Publication.)

A087785 -- Conservatorship of the Person and Estate of Dolores Davidson.

The order appealed from is affirmed. Sepulveda, J. We Concur: Poché, Acting P.J., Reardon, J. (Not for Publication.)

A088519 -- The People v. Michael Frawley.

The order of dismissal as to the sixth count of the information is reversed.
The trial court is directed to reinstate that count and to otherwise proceed in a manner consistent with this opinion. Sepulveda, J. We Concur: Hanlon, P.J., Reardon, J. (Certified for Publication.)

A086689 -- The People v. Mary Lynn Mackusick.

The judgment is affirmed. Sepulveda, J. We Concur: Hanlon, P.J., Reardon, J.
(Not for Publication.)

Division Five

A088139 -- In re Jayardy C., a Person Coming Under the Juvenile Court Law.

The orders denying appellant's petition for modification and terminating appellant's parental rights are affirmed. Kramer, J.* We Concur: Jones, P.J., Stevens, J.
(Not for Publication.)

*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, July 31, 2000 (continued)

A090931 -- Fidelity National Title Insurance Company v. The Superior Court of Alameda County; Bank of Oakland, R.P.I.

Therefore, let a peremptory writ of mandate issue commanding respondent Alameda County Superior Court, in case number 807507-5, to (1) set aside and vacate its April 3, 2000 order granting Bank's motion for summary adjudication as to the first cause of action, and (2) thereafter enter a new order denying Bank's motion, consistent with the views expressed in this opinion.

Fidelity is entitled to recover the costs it incurred in this writ proceeding. (Cal Rules of Court, rule 56.4.) Kramer, J.* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A089568 -- City of Oakland v. Vernolia McCullough et al.

The Revised Order for Preliminary Injunction and Closure of Property is modified to provide that the property is ordered closed pending a trial on the merits but for no longer than one year commencing December 2, 1999. As so modified, the order is affirmed. The trial court is encouraged to schedule this action for trial at the earliest possible date. (§ 11575; Code Civ. Proc., § 527, subd. (a) & (e).) Each party shall bear its own costs on appeal. Kramer, J.* We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A088970 -- The People v. Warren Lawrence Ricketts.

The judgment is affirmed. Stevens, J. We Concur: Jones, P. J., Rivera, J.* (Not for Publication.)

*Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.